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From:	Kevin J. Zilka		

Docket No.:   NAI1P086/00.058.01

App. No: 09/650,729

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August 31, 2004

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of	)
	) Ex.: Nguyen, Quang
Peter J. Churchyard et al.	)
	) Art Unit: 2141
Application No. 09/650,729	)
	)
Filed: August 30, 2000	)
	)
For: METHOD AND SYSTEM FOR	) Date: August 31, 2004
MAINTAINING A COMMUNICATIONS	)
PROTOCOL SESSION	)

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Commissioner for Patents
Alexandria, VA 22313-1450

ATTENTION: Board of Patent Appeals and Interferences

REPLY BRIEF (37 C.F.R. § 1.193)

This Reply Brief is being filed within two (2) months of the mailing of the Examiner's Answer on August 03, 2004.

In sections (1) – (9) of the Examiner's Answer, the Examiner recaps the various sections of appellant's appeal brief. Moreover, in section (10), the Examiner substantially reiterates the rejection of a prior Office Action mailed April 02, 2004.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. § 1.8(a))

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Date: 8/31/2004	Erica L. Farlow
	(type or print name of person certifying)

- Appellant's Brief—page 1 of 9

Thereafter, in section (11), the Examiner sets forth his response to appellant's previous arguments included in the recently filed appeal brief. Following is an issue-by-issue reply to the Examiner's Answer.

(A)

The Examiner begins by referencing section (10), paragraph 4 to reject Claim 1. After careful review of such paragraph, appellant notes that such rejection is substantially similar to that already set forth by the Examiner in the office action mailed April 02, 2004.

Thus, appellant draws the Examiner's attention to pages 5-9 of the appeal brief mailed June 18, 2004, which evidences the fact that the prior art references, when combined, fail to teach or suggest all of the claim limitations of Claims 1-2, and 15-16.

(B)

In the Examiner's "Response to Arguments" in the action mailed May 20, 2004, the Examiner relied, at least in part, on applicant's admitted prior art (AAPA) on page 2, lines 13-19 of the originally filed specification to meet appellant's claims.

In the Examiner's Answer, it appears that the Examiner no longer relies on such specific excerpts, but now just the following alleged prior art:

'a client communicates with a server over communications network which can contain agents such as proxies, firewalls, routers, etc., as intermediate nodes," RFC 791," "RFC 793," RFC 2616," and scanning a file, encrypting/decrypting processes, converting/translating communication protocols, file formats, and/or inserting advertising, at an intermediate node.'

It thus appears that the Examiner no longer relies on the Examiner's previous arguments (which cited page 2, lines 13-19 to meet appellant's claims), but rather now relies on the above alleged prior art citations.

However, relying only on the foregoing quoted alleged prior art (without the benefit of appellant's statement of the problem solved set forth on page 2, lines 13-19) makes it even more clear now that the Examiner's proposed combination fails to meet appellant's claimed "wherein said one or more messages containing said illusory content is sent for preventing a time out operation <u>as a result of security processing</u>" (emphasis added), as previously purported by appellant.

(C)

Despite the statements in section (B), the Examiner continues in the present paragraph to rely on page 2, lines 13-19 of appellant's specification to make a prior art showing of appellant's claimed "wherein said one or more messages containing said illusory content is sent for preventing a time out operation <u>as a result of security processing</u>" (emphasis added).

Again, it is noted that such statement of the problem on page 2, lines 13-19 was set forth in a section entitled "Description of the Related Art," not "Appellant's Admitted Prior Art," as purported by the Examiner. The Examiner's use of appellant's recognition of the problem to be solved is not proper, as it is <u>not admitted prior art</u>.

Thus, the Examiner's use of appellant's recognition of the "problem to be solved" in the rejection is improper, since it constitutes appellant's own disclosure. See excerpt from MPEP below:

> "To reach a proper determination under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made.

In view of all factual information, the examiner must then
make a determination whether the claimed invention "as a
whole" would have been obvious at that time to that person.
<u>Knowledge of appellant's disclosure must be put aside in
reaching this determination</u>..." (emphasis added - MPEP 2142)

It appears that the Examiner has not yet fully addressed this argument, but instead states in section (B) that the Examiner is relying on something other than what is specifically set forth on page 2, lines 13-19, and then, in section (C), again improperly relies on appellant's statement of the problem.

Moving on to page 13, second paragraph in section (C), the Examiner continues by again reiterating that the following excerpt from Feldman is relied upon (in combination with the improper use of page 2, lines 13-19 of appellant's specification) to make a prior showing of appellant's claimed "sending one or more messages containing illusory content from said agent to said client:"

"'VC KeepAlive':
This message is sent by an ISR to inform its neighbors of
its continued existence. It is the first message that is
transmitted after initialization. In order to prevent the
neighbor timeout period from expiring, the `VC KeepAlive`
messages must be periodically sent to neighbors. The `VC
KeepAlive` need only to be sent when no other protocol
messages have been transmitted within the periodic interval
time." (col. 7, lines 25-31)

It appears that the Examiner continues to interpret appellant's claimed "agent" and "client" in a manner that is met by Feldman's Integrated Switch Router (ISR), which is defined by Feldman to include a "standard IP router."

In appellant's appeal brief, appellant set forth definitions of such terms to show the manner in which appellant's claimed "agent" and "client" were clearly not met by a "standard IP router." In response, the Examiner merely made the statement that "the test [for obviousness] is what the combined teachings of the references would have suggested to those of ordinary skill in the art."

Appellant again asserts that the previously provided definitions evidence how those of ordinary skill in the art interpret the terms of appellant's claims and Feldman's disclosure, and further illustrate their vast differences in meaning and substance. Thus, in view of such differences, appellant asserts that the Examiner's statement of obviousness is simply incorrect.

While appellant has provided hard evidence (i.e. the definitions and related arguments, etc.) to illustrate the manner in which appellant's claims are not met, the Examiner has merely relied on a blanket statement of law and unsupported conclusions.

Very disturbingly, it is further noted that the Examiner has still not addressed appellant's previous argument regarding the claimed "sending one or more messages <u>containing illusory content</u>" (emphasis added). Again, it is noted that the VC KeepAlive message further does not contain any "illusory content," as claimed by appellant. As set forth on page 9, first paragraph of the originally filed specification, the use of illusory content creates very little impact on the processing within the entities that do not recognize it. Only appellant teaches and claims such feature for the foregoing purpose.

Again, at least the third element of the *prima facie* case of obviousness has not been met, since the Examiner has relied upon subject matter that is not prior art; and the prior art, when combined, fails to teach or suggest all the claim limitations, as noted above.

(D)

In the present paragraph, the Examiner relies on the following excerpt from Feldman to address appellant's previously unaddressed arguments that Feldman fails to even suggest appellant's

claimed "determining if illusory content needs to be sent <u>prior to sending said response</u>" (emphasis added).

> "'VC KeepAlive':
> This message is sent by an ISR to inform its neighbors of its continued existence. It is the first message that is transmitted **after initialization**. In order to prevent the neighbor timeout period from expiring, **the 'VC KeepAlive' messages must be periodically sent to neighbors. The 'VC KeepAlive' need only to be sent when no other protocol messages have been transmitted within the periodic interval time.**" (emphasis added - col. 7, lines 25-31)

Specifically, the Examiner relies on the foregoing emphasized portion of such excerpt to meet appellant's claimed timing in which it is determined if illusory content needs to be sent, namely <u>prior to sending said response</u>. It thus appears that the Examiner is misinterpreting the foregoing excerpt to somehow find appellant's claimed feature therein. Only appellant teaches and claims the specific decision of determining if illusory content needs to be sent <u>prior to sending said response</u>; not after initialization, not at periodic intervals, and not based on whether protocol messages have been transmitted within a periodic interval, as suggested above by Feldman.

By making such decision prior to sending a response, appellant's claimed invention is capable of sending responses that are equipped with illusory content when specifically needed. Again, Feldman does not even suggest the concept of illusory content, let alone the foregoing specifically timed decision to include the same in a response for enhanced avoidance of time outs, etc.

Again, at least the third element of the *prima facie* case of obviousness has not been met, since the prior art, when combined, fails to teach or suggest all the claim limitations, as noted above.

(E)

In the present paragraph, the Examiner incorporates section (10), paragraph 7 to make a prior art showing of appellant's claimed "wherein said step of sending one or more messages containing illusory content further comprises the steps of: creating a copy of said response; modifying said copy of said response by inserting an entity-header; and transmitting said modified response to said client" (emphasis added).

In section (10), paragraph 7, the Examiner relies on Feldman to make a prior art showing of appellant's claimed "sending one or more messages containing illusory content" (emphasis added). Again, for the reasons set forth hereinabove, Feldman makes no suggestion of illusory content.

Moreover, the Examiner relies on Feldman to make a prior art showing of appellant's claimed "creating a copy of said response." Feldman, however, does not even suggest any creation of response copies.

Still yet, the Examiner relies on http://www.faqs.org/rfcs/rfc2616.html to make a prior art showing of modifying said copy of said response by inserting an entity-header; and transmitting said modified response to said client." http://www.faqs.org/rfcs/rfc2616.html, however, makes absolutely no suggestion of modifying a response copy, as claimed.

Again, at least the third element of the *prima facie* case of obviousness has not been met, since the prior art, when combined, fails to teach or suggest all the claim limitations, as noted above.

(F)

In the present paragraph, the Examiner disagrees with appellant's *non-analogous* arguments regarding the combination of Kloth and AAPA. In doing so, it appears that the Examiner has simply broadened the perceived art of Kloth to the point that there is something analogous to AAPA. Appellant respectfully asserts that such approach is improper since, at some high level, all inventions have something in common with (i.e. is analogous to) other inventions.

Moreover, it appears that the Examiner has simply dismissed appellant's previously mentioned paramount differences in the problems that the non-analogous arts of Kloth and AAPA address. Again, in view of the vastly different types of problems rule-based IP packet processing addresses as opposed to session maintenance, the Examiner's proposed combination is inappropriate.

(G)

In response to appellant's substantive arguments regarding Issues #3 - #5, the Examiner relies on a blanket argument that the Examiner's previously provided motivations are sufficient. Appellant again respectfully disagrees for the reasons set forth in the appellant's appeal brief.

Moreover, it is noted that the Examiner has not even addressed the following arguments regarding Claim 8, which are directed toward the third element of the *prima facie* case of obviousness.

The Examiner relies on col. 2, lines 1-5 of Ji to make a prior art showing of appellant's claimed "wherein said step of searching a file further comprises scanning said file for one or more text phrases." Such excerpt along with the remaining Ji reference, however, makes absolutely no mention or suggestion of any sort of "searching a file [which] further comprises scanning said file for one or more text phrases" (emphasis added).

Again, at least the third element of the *prima facie* case of obviousness has not been met for these reasons.

In view of the remarks set forth hereinabove, all of the independent claims are deemed allowable, along with any claims depending therefrom.

In the event a telephone conversation would expedite the prosecution of this application, the Examiner may reach the undersigned at (408) 971-2573. For payment of any additional fees due

in connection with the filing of this paper, the Commissioner is authorized to charge such fees to Deposit Account No. 50-1351 (Order No. NAI1P086/00.058.01).

Respectfully submitted,

By: _____   Date: _____8/31/07_____

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